

## LEGAL GUIDANCE

### Equal Opportunity for Individuals with Disabilities

The Americans with Disabilities Act (Public Law 101-336), 42 U.S.C. 12101, became law on 26 July 1990. Implementation of the Act was deferred for a period of 24 months so that employers, employment agencies, labor organizations, or joint labor-management committees could make "reasonable accommodations" for workers with disabilities. It becomes effective 26 July 1992 for employers with 25 or more employees. For employers with 15 to 25 employees, implementation can be extended an extra 2 years. The goal is to remove discrimination against disabled persons in areas such as employment, housing, public services, privately-owned public accommodations, education, transportation, recreation, communications, and access to public services. The new law does not apply to DoD personnel since the United States Government is not an "employer" under the terms of the Act. However, it does reach Department of Defense (DoD) contractors, including those providing medical supplies and healthcare services to the Navy.

The Act prohibits discrimination against disabled Americans, because of the disability, in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment. A disabled person is defined as anyone who has ever had or is perceived as having an impairment that substantially limits a major life activity. Individuals with diseases such as AIDS and recovering alcoholics and drug addicts are considered disabled.

Private sector employers can not require pre-employment medical examinations or make inquiries as to the nature or severity of an applicant's disability. Employers may ask the disabled applicant what accommodations he/she requires to perform the job and they may ask the individual to explain or demonstrate how they will do the job. Employers may require a medical examination after an offer of employment has been made and prior to the beginning of the employment duties if all of the entering employees are subjected to the examination regardless of disability. The information obtained must be maintained separately in a separate medical file and treated as a confidential medical record. However, supervisors, managers, first aid, and safety personnel may be informed, when appropriate, of restrictions on the work or duties of the employee and necessary accommodations.

The Department of Defense General Counsel has opined that the Americans with Disabilities Act does not prevent DoD from applying safety and occupational health programs to DoD personnel. Therefore, DoD safety and occupational health program policies and procedures (DoDI 6055.1, DoD 6055.5-M, DoDI 6055.12, and DD Form 2493-1) remain in effect.

The Act requires employers to make existing facilities readily accessible to and usable by individuals with disabilities. It is up to the disabled individual to request needed accommodations. If an employer believes these changes would cause an "undue hardship" on the business, he or she may refuse to make the changes.

Disabled individuals who feel they have been discriminated against may file charges with the Equal Employment Opportunity Commission. If charges are upheld, employers could face up to \$300,000 in punitive damages.

Point of contact at NMLC is Mr. John R. Osing, Jr., Office of Counsel, who may be reached at (301) 619-2157 or by DSN at 343-2157.